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<p>CYNTHIA ANDERSON-BARKER,</p> <p>Petitioner,</p> <p>vs.</p> <p>CITY OF LOS ANGELES, and DOES 1 through 100, inclusive,</p> <p>Respondents.</p>	<p>Case No.: BS159845</p> <p>Judge Amy D. Hogue Hearing Date: October 19, 2016 Time: 9:30 a.m. Dept.: 86</p> <p>[TENTATIVE] ORDER GRANTING IN PART AND DENYING IN PART THE APPLICATION FOR A WRIT OF MANDATE</p>
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Petitioner Cynthia Anderson-Barker ("Petitioner") seeks a writ of mandate under Code Civ. Proc. § 1085(a) ordering Respondent the City of Los Angeles ("Respondent" or the "City") to produce copies of certain government records pursuant to the California Public Records Act ("CPRA") (Gov. Code §§ 6250 *et seq.*).

For the following reasons, the Court GRANTS the application for a writ of mandate compelling the City to produce redacted CHP 180 forms and VIIC data documenting vehicle seizures made at the direction of a City employee pursuant to Cal. Veh. Code § 21100.4 between January 1, 2008 to the present. The Court DENIES the application for a writ of mandate compelling the City to produce the October 7, 1996 memorandum.

I. Evidentiary Objections

The Court SUSTAINS Respondent's objections to the "Administrative Record." In this case, there was no "final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given" (Code Civ. Proc., § 1094.5.) Thus, there is no administrative record for the Court to consider. Nevertheless, the Court considers Petitioner's exhibits to the extent that they are admissible.

The Court SUSTAINS Respondent's objections to the Declaration of Dwight Cook. In any event, the Court did not rely on the Declaration of Dwight Cook in reaching its decision. The Court OVERRULES Respondent's objections to the Reply Declaration of Donald Cook.

The Court SUSTAINS Petitioner's objection to Respondent's request for judicial notice of the Superior Court decision *Flynn v. City of Los Angeles* (BS147850).

1 **II. Statement of Facts**

2 On December 15, 2015, the Petitioner sent a CPRA Request to the City (the "CPRA
3 Request") seeking to inspect and copy the following:

- 4 1. All the City of Los Angeles' policies relating to Cal. Gov't Code § 53075.61;
5 2. All Training materials relating to the City of Los Angeles' enforcement of and/or
6 conduct pursuant to Cal. Gov't Code § 53075.61;
7 3. All City of Los Angeles' policies relating to Cal. Veh. Code § 21100.4;
8 4. All training materials relating to the City of Los Angeles' enforcement of and/or
9 conduct pursuant to Cal. Veh. Code § 21100.4;
10 5. From January 1, 2008 through the present, all CHP 180 forms where a vehicle was
11 seized pursuant to Cal. Veh. Code § 21100.4 and at the direction of an employee of the
12 City of Los Angeles;
13 6. From January 1, 2008 through the present, all VIIC data CHP 180 forms where a
14 vehicle was seized pursuant to Cal. Veh. Code § 21100.4 and at the direction of an
15 employee of the City of Los Angeles;
16 7. From January 1, 2008 through the present, each and every "Statement of Reasonable
17 Cause" signed by an employee of the City of Los Angeles and concerning a vehicle
18 seized pursuant to Cal. Veh. Code § 21100.4; and
19 8. All "writing" ("writing" as defined by Cal. Evid. Code § 250), showing the number of
20 vehicles seized pursuant to Cal. Veh. Code § 21100.4 and seized t the direction of an
21 employee of the City of Los Angeles.

22 On January 27, 2016, Petitioner filed a Petition for Writ of Mandate (the "Petition")
23 seeking an order compelling the City to provide the documents requested in the CPRA Request.
24 In response to the Petition, the City produced some of the requested documents. (Brief p. 1.)

25 Petitioner now seeks a writ of mandate compelling the City to produce the following:

- 26 A. An October 7, 1996 LA City Department of Transportation Memorandum ("10/7/96
27 Memorandum") regarding bandit taxicab enforcement procedures.
28 B. For vehicles seized anytime from January 1, 2008, to the present, redacted CHP 180
 forms documenting vehicle seizures made at the direction of a City employee pursuant
 to Cal. Veh. Code § 21100.4.

1 C. For vehicles seized anytime from January 1, 2008, to the present, certain VIIC
2 computer data regarding vehicle seizures made at the direction of a City employee
3 pursuant to Cal. Veh. Code § 21100.4.¹

4 The City opposes the Petition.

5 **III. Standard of Review**

6 A. Traditional Writ of Mandate

7
8 Code of Civil Procedure section 1085(a) provides in relevant part:

9
10 A writ of mandate may be issued by any court to any inferior tribunal, corporation, board,
11 or person, to compel the performance of an act which the law specially enjoins, as a duty
12 resulting from an office, trust, or station, or to compel the admission of a party to the use
13 and enjoyment of a right or office to which the party is entitled, and from which the party
is unlawfully precluded by that inferior tribunal, corporation, board, or person.

14 “There are two essential requirements to the issuance of a traditional writ of mandate: (1)
15 a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present
16 and beneficial right on the part of the petitioner to the performance of that duty. (*California Ass’n
for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.)
17 “Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy”
18 (*Pomona Police Officers’ Ass’n v. City of Pomona*, (1997) 58 Cal.App.4th 578, 583-84.)

19 “When there is review of an administrative decision pursuant to Code of Civil Procedure
20 section 1085, courts apply the following standard of review: ‘[J]udicial review is limited to an
21 examination of the proceedings before the [agency] to determine whether [its] action has been
22 arbitrary, capricious, or entirely lacking in evidentiary support, or whether [it] has failed to follow
23 the procedure and give the notices required by law.’ [Citations.]” (*Pomona Police Officers’ Ass’n*,
24 *supra*, 58 Cal.App.4th at 584)

25
26 ¹ In her Reply papers, Petitioner additionally requests the Court to compel the City to produce data in the City’s
27 Taxicab and Administrative Franchise and Information System. The Court declines to consider this request as it was
28 raised for the first time in Petitioner’s Reply brief.

1: B. California Public Records Act

2 Pursuant to the CPRA (Gov. Code § 6250, et seq.), individual citizens have a right to access
3 government records. In enacting the CPRA, the California Legislature declared that “access to
4 information concerning the conduct of the people's business is a fundamental and necessary right
5 of every person in this state.” (Gov. Code, § 6250; see also *County of Los Angeles v. Superior*
Court, (2012) 211 Cal.App.4th 57, 63.) To that end, Gov. Code § 6253(b) states:

6 Except with respect to public records exempt from disclosure by express provisions of law,
7 each state or local agency, upon a request for a copy of records that reasonably describes
8 an identifiable record or records, shall make the records promptly available to any person
9 upon payment of fees covering direct costs of duplication, or a statutory fee if applicable.
10 Upon request, an exact copy shall be provided unless impracticable to do so.

11 (Gov. Code, § 6253(b).)

12 **IV. Analysis**

13 A. October 7, 1996 Memorandum

14 In response to Petitioner's CPRA Request, the City produced a May 23, 2012 Intra-
15 Departmental Correspondence. (Pet. Exh. B.) That document references an October 7, 1996
16 Department memorandum describing bandit taxicab enforcement procedures. (Pet. Exh. B. p. 5.)
17 Petitioner seeks a copy of that October 7, 1996 memorandum.

18 In response, Deputy City Attorney Gerald M. Sato (“Sato”) declares: “Upon information
19 and belief, after a diligent search conducted at my request, the City does not have possession,
20 custody, or control of the memorandum.” (Sato Decl. ¶ 4.) The City also argues that this document
21 is not encompassed by any of the requests in the January 27, 2016 Petition for Writ of Mandate
22 (the “Petition”).

23 Under Government Code section 6253, the City does not have a duty to produce records
24 not in its possession. Accordingly, the Court DENIES Petitioner's request for a writ of mandate
25 compelling the City to produce this document.

1 B. CHP 180 Forms

2 “A CHP 180 form is used by the Sheriff’s Department to document when a vehicle is towed
3 to be stored or impounded, effectively removing it from the owner’s control and temporarily
4 depriving the owner of possession. The Sheriff’s manual dictates that a deputy sheriff must fill out
5 a CHP 180 form to document a stored or impounded vehicle.” (*County of Los Angeles v. Superior*
6 *Court* (2015) 242 Cal.App.4th 475, 478.) When filling out a CHP 180 form, “[t]he name(s) and
7 address(es) of a vehicle’s registered and legal owner(s) are obtained from either the registration
8 paperwork or a registration check of the vehicle with the Department of Motor Vehicles (DMV)
9 database” (*Id.* at 479.)

10 Petitioner seeks redacted copies of CHP 180 forms documenting vehicle seizures made at
11 the direction of a City employee pursuant to Cal. Veh. Code § 21100.4 between January 1, 2008
12 and the present.

13 The City responds that CHP 180 forms are exempt from disclosure under Government
14 Code section 6254.1(b), which exempts from disclosure “the residence or mailing address of any
15 person in any record of the Department of Motor Vehicles except in accordance with Section
16 1808.21 of the Vehicle Code.” In *County of Los Angeles v. Superior Court* (2015) 242 Cal.App.4th
17 475 (“*County of Los Angeles*”), a case involving Petitioner Anderson-Baker’s request for CHP 180
18 forms from the County of Los Angeles, the court determined that section 6254.1(b) exempts from
19 disclosure the mailing and residence addresses listed on CHP 180 forms because “th[at] personal
20 information originate[s] from DMV records...” (*Id.* at 484.)

21 Nevertheless, the City must still produce CHP 180 forms with residence and mailing
22 addresses redacted. The City argues that it should not be required to produce redacted CHP 180
23 forms because Petitioner did not specifically request redacted CHP 180 forms in her Petition for
24 Writ of Mandate. Yet, Petitioner submits evidence that after the City objected to producing the
25 CHP 180 forms, Petitioner informed the City that she would be willing to accept redacted CHP
26 180 forms. (Cook Reply Decl. ¶ 4, Exh. N.) Also, Petitioner’s opening brief specifically requests
27 the Court to compel the City to produce redacted CHP 180 forms. (Brief p. 1.) The City does not
28 submit any evidence that producing the redacted CHP 180 forms would be unduly burdensome.

 Accordingly, the Court GRANTS Petitioner’s request for an order compelling the City to
produce redacted CHP 180 forms.

1 C. Vehicle Impound Information Center Data

2 Petitioner also seeks certain data from the City's Vehicle Information Impound Center
3 ("VIIC") database.

4 In opposition, the City argues that the January 27, 2016 Petition did not specify that
5 Petitioner was seeking VIIC data with personal identifiers redacted. However, the fact that
6 Petitioner did not initially request redactions does not preclude Petitioner from agreeing to
7 redactions at a later point in time. Petitioner's brief in support of the Petition states that "Petitioner
8 does *not* seek any VIIC data reflecting vehicle owners' names, addresses or other personal
identifiers (e.g., social security number, driver's license numbers, etc.)" (Brief p. 6.)

9 The City also argues that the VIIC Data is not subject to disclosure because it is controlled
10 by private subcontractors and not in the "possession" of the City. Under section 6253(c), an agency
11 is only required to provide "copies of disclosable public records in the possession of the agency."
12 In *Consolidated Irr. Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 710, the court concluded
13 that for purposes of the CPRA, "an agency has constructive possession of records if it has the right
14 to control the records, either directly or through another person." In this case, the City argues that
it does not possess the records because the records are in the possession of private contractors that
15 have entered into agreements to become Official Police Garages ("OPG").

16 In response, Petitioner submits a sample of an Official Police Garage Agreement (the
17 "Agreement"). (Pet. Exh. H.) Section 14.3(c) of the Agreement states:

18 "The OPG must make available for examination or audit by any representative of the City
19 or the Board, all data and records, including computer data files, related to the towing or
20 storage services provided under this Agreement (collectively referred to [as] the "Essential
21 Records"). Essential Records must be made available without notice, twenty (24) hours a
day, and as often as the City may deem necessary.

22 In addition, Section 14.1 incorporates into the Agreement the Standard Provisions for City
23 Contracts (the "Standard Provisions"). Petitioner attaches a copy of those Standard Provisions as
24 Exhibit I. Section PSC-23 of the Standard Provisions states:

25 "Unless otherwise provided for herein, all Work Products originated and prepared by
26 CONTRACTOR or its subcontractors of any tier under this Contract **shall be and remain**
27 **the exclusive property of the CITY** for its use in any manner it deems appropriate. Work
28 Products are all works, tangible or not, created under this Contract including, without

1 limitation, **documents**, material, **data**, reports, manuals, specifications, artwork, drawings,
2 sketches, **computer programs and databases**, schematics, photographs, video and
3 audiovisual records, sound recordings, marks, logos, graphic designs, notes, websites,
4 domain names, inventions, processes, formulas matters and combinations thereof, and all
forms of intellectual property.”

5 (Emphasis added.) Based on these contracts, the Court finds that the City has constructive
6 possession of the VIIC data and thus is required to produce that data (with any necessary
7 redactions) under Government Code section 6253(b).

8 Accordingly, the Court GRANTS Petitioner’s request for an order compelling the
9 City to produce the redacted VIIC data.

10 **V. Conclusion**

11
12 For the foregoing reasons, the Court GRANTS the application for a writ of mandate
13 compelling the City to produce redacted CHP 180 forms and VIIC data documenting vehicle
14 seizures made at the direction of a City employee pursuant to Cal. Veh. Code § 21100.4 between
15 January 1, 2008 to the present. The Court DENIES the application for a writ of mandate
compelling the City to produce the October 7, 1996 memorandum.

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18 Dated: _____

19 _____
20 AMY D. HOGUE
21 JUDGE OF THE SUPERIOR COURT
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- 10-7-96 Memo

- TAFIS data

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Wilkie J. Gervais